

Decision 03-05-053 May 22, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Require
California Natural Gas and Electric Utilities to
Preserve Interstate Pipeline Capacity to
California.

Rulemaking 02-06-041
(Filed June 27, 2002)

INTERIM DECISION ON RECATEGORIZATION

Summary

This decision recategorizes this proceeding from quasi-legislative to ratesetting category. The ex parte rules applicable to ratesetting proceedings will now apply to this proceeding.

Background

This proceeding, Order Initiating Rulemaking (OIR) 02-06-041 was commenced to establish rules for the gas utilities to acquire turned-back gas on the El Paso Natural Gas Company interstate pipeline (El Paso). When this OIR was initiated, it was characterized as a quasi-legislative proceeding. According to Public Utilities Code Section 1701 (c)(1), “[q]uasi-legislative cases . . . are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.”

Quasi-legislative was the most appropriate category for this proceeding, as it was initiated under emergency circumstances, to respond quickly to a Federal Energy Regulatory Commission order authorizing the turn back of firm capacity on the El Paso line. The concern was that if replacement shippers did not acquire the turned back capacity, California could permanently lose up to 725 MMcf/d of

El Paso capacity. An interim decision issued on July 27, 2002, establishing rules for the acquisition of this turned-back capacity on El Paso by California's natural gas and largest electric utilities.

The interim decision, Decision (D.) 02-07-027, issued without hearings, indicated that other issues connected with the El Paso turned-back capacity would be addressed in Phase II of this proceeding. In a Scoping Memorandum issued on December 26, 2002, Commissioner Lynch, the assigned Commissioner, set forth the issues to be addressed in Phase II and established a procedural schedule.¹ Issues to be addressed in Phase II include, among others: compliance, cost recovery, cost allocation, capacity releases, and adjustment of current incentive mechanisms-topics that have to do with costs and reasonableness review. These issues are appropriate to a ratesetting proceeding.

Ex Parte Rules

The initial categorization was proper as quasi-legislative since the only remedies considered were prospective rule changes and the establishment of policy. No fact-finding was necessary for Phase I. In quasi-legislative cases, ex parte communications with a decision maker are permitted "without any restrictions."²

Ratesetting is appropriate for cases in which there is a mix of fact finding and policy making and is fitting for Phase II of this proceeding. We are recategorizing the proceeding at this juncture because it will involve fact finding

¹ The scoping memo inadvertently indicated that this matter was categorized as "ratesetting." Since this proceeding was initially categorized as quasi-legislative, a Commission decision is required to change the categorization.

² Pub. Util. Code § 1701.4(b)

and policy making. The ex parte rules for rate-setting proceedings, as set forth in Pub. Util Code § 1701.3(c) and Rule 7(a)(1) and (c), are now in effect.

Comment on Comment Period

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Carol Brown is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This proceeding was initiated as a quasi-legislative because it was designed to establish policy affecting an entire industry.
2. An Interim Decision was issued July 27, 2002, establishing rules for the gas utilities to procure capacity turned-back on the El Paso system.
3. The proceeding is now advancing as Phase II and will look at issues specific to individual gas utilities such as cost recovery, cost allocation, and adjustments of current incentive mechanisms, topics that will involve a mixed inquiry into issues of fact and policy.

Conclusions of Law

1. This Commission had discretion pursuant to Rule 6.1 of its Rules of Practice and Procedure to categorize this proceeding in the manner most suitable to the circumstances of this proceeding.
2. Phase II of this proceeding is appropriately categorized as ratesetting. This phase of the proceeding will involve an inquiry into issues of costs and reasonableness review.

3. Ratesetting proceedings typically involve a mix of policy making and fact-finding relating to a particular public utility, and Phase II will include inquiries into the costs and reasonableness review of the individual gas companies directed to acquire turned-back capacity on the El Paso system.

4. The OIR, which categorized this proceeding as quasi-legislative, should be changed. Phase II of this proceeding should be categorized as ratesetting.

5. The ex parte rules applicable to ratesetting proceedings are applicable to this proceeding, effective immediately.

INTERIM ORDER

IT IS ORDERED that this proceeding, preliminarily categorized as quasi-legislative, should be recategorized as ratesetting.

This order is effective today.

Dated May 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners